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UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Michael Conor MINOGUE
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U.S. Appln. No. : 09/902,287

U.S. Filing Date : July 10, 2001

Title of Invention : AN ELECTROTHERAPY DEVICE AND
METHOD

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Washington, DC 20231, on April 9, 2002

Gordon M. Kessler Reg. No. 38,511

Name of Applicant, Assignee or Registered Representative

Gordon Kessler
Signature

Date of Signature

**PETITION TO MAKE SPECIAL - INFRINGEMENT
INFORMATION DISCLOSURE STATEMENT, AND
REQUEST FOR INTERVIEW PRIOR TO FIRST OFFICE ACTION**

Assistant Commissioner for Patents
Box PATENT APPLICATION (35 U.S.C. 111)
Washington, D.C. 20231
Sir:

INFORMATION DISCLOSURE STATEMENT

The Examiner's attention is respectfully directed to the documents cited in the
accompanying PTO 1449 (submitted in duplicate). A copy of each of these documents is
attached for the application file.

The Examiner is respectfully requested to consider and make of record the documents
cited and return to the undersigned an initialed PTO 1449 showing that the documents have
indeed been considered and made of record.

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It is believed that no fee is due for entry of this Information Disclosure Statement as it is submitted prior to receipt of the first Office Action in this application. However, if any fee is required, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, against Deposit Account No. 50-0320.

PETITION TO MAKE SPECIAL - INFRINGEMENT

Pursuant to 37 C.F.R. §1.102 and MPEP §708.01 and § 708.02 (II) and any other Rules of the Commissioner and MPEP sections, Applicants respectfully petition to make this application special on the basis of infringement occurring by third parties. A check for \$130.00 in payment of the fee set forth in 37 C.F.R. §1.17(h) is enclosed; and, the Commissioner is hereby authorized to charge any additionally required fee for this petition or for making the application special or credit any overpayment in such fees to Deposit Account No. 50-0320.

The undersigned is an attorney registered to practice before the PTO, as required by MPEP §708.02.

A careful and thorough search of the prior art was made and the documents uncovered by that search are submitted herewith, as shown by the foregoing Information Disclosure Statement, as required by MPEP §708.02.

The present application claims a device for attaching electrodes to a subject for stimulating abdominal muscles by electrotherapy. According to one aspect, the invention provides an attachment means that can be extended around the torso of a user. The attachment means, that may be in the form of a belt, is provided with electrode locating means for locating at least three electrodes designed so that a central electrode may be located relative to the umbilicus of the subject and two side electrodes are located to the either side of the central electrode. When electrical pulses are applied to the electrodes electrical currents stimulate the subject's abdominal muscle groups. See Claim 1. The present application also claims that side electrodes are positioned toward the left and right mid-axillary lines of the subject. See, e.g., Claims 2-5. This positioning has been found particularly advantageous for exercising the rectus abdominus, the transversalis, and the oblique muscle groups using a minimum number of electrodes. See Specification, pages 14-16, and 27.

In addition, the application claims multiple locating means for positioning the side electrodes at different locations relative to the central electrode to accommodate subjects of

different girths. See Claim 12. The application also claims a method for stimulating abdominal muscles that comprises the steps of positioning three electrodes on the abdomen of a subject, one adjacent to the umbilicus and two located toward the mid-axillary lines and applying an electrical current between the electrodes. See Claim 52.

Applicants' assignee, Bio-Medical Research, Ltd. ("BMR"), has become aware of a competitor in the United States – The Dezac Group, Ltd. ("Dezac") – selling a electrical muscle stimulator device under the name RIO AB BELT, which is within the claims of the present invention. Dezac sells the RIO AB BELT in the United States through retailers that advertise on the world wide web. Attached as Exhibits A and B are pages from websites of retailers offering the AB BELT for sale in the United States.

Attached as Exhibit C is a copy of the instruction manual (the "Manual") provided along with the RIO AB BELT. As shown at page 3 of the Manual, the AB BELT includes a belt and control unit (1) and electrode pads (3). The electrode pads are connected to the inside surface of the belt by press studs, and can be positioned in two configurations, denoted "Position I – Inner Muscle Group" and "Position II – Outer Muscle Group." Manual at 4-6. The control unit is positioned on the outside of the belt, opposite the central electrode. Id. at 5. A photograph on the front cover of the Manual shows a model wearing the AB BELT with the control unit positioned at the center of her abdomen over her umbilicus. As discussed at page 5 of the manual, the control unit can be adjusted to deliver electrical pulses according to one of three selectable programs to stimulate the user's abdominal muscles.

A rigid comparison of the RIO AB BELT with the claims of the application reveals that at least some of the claims are unquestionably infringed. As compared with claims 1-5 and 52, the AB BELT provides an attachment means (i.e., a belt) with locating means (i.e., press studs) for attaching at least three electrodes, a central electrode and two side electrodes. See Manual at 4-6. When worn as instructed the central electrode is positioned adjacent to the user's umbilicus and the side electrodes are positioned toward the mid point of the mid-axillary lines of the user between the rib cage and the corresponding iliac crest. Id. at front cover and 6. Electrical pulses are applied to these electrodes to stimulate the user's abdominal muscles. Id. at 5. With respect to claim 12, there are two locating means for each side electrode, shown as Position I and Position II at page 6 of the Manual for accommodating users of different girths. Thus, at least some of the claims of the application are unquestionably infringed by the AB BELT.

Accordingly, it is respectfully submitted that all of the requirements of MPEP §708.02 (II) have been met, namely the petition fee is enclosed herewith and this paper is a petition to make special and:

- (1) That there is an infringing product actually on the market or methods in use;
- (2) That a comparison of the alleged infringing product, or methods with the claims of the application has been made, and that, in the opinion of the undersigned, some of the claims of the application are unquestionably infringed; and
- (3) That there has been a careful and thorough search of the prior art (with a copy of the references therefrom supplied herewith).

It is respectfully submitted that BMR is suffering by not having a U.S. Patent corresponding to the present application. Until a U.S. Patent corresponding to the present application issues, BMR is without any remedy to prevent infringement; and, without a U.S. Patent corresponding to the present application, BMR is faced with lost sales and revenue due to competitive products and methods within at least one claim of the present application.

Therefore, it is respectfully submitted that the present application qualifies for special status; and, according the present application special status is respectfully requested.

REQUEST FOR INTERVIEW

In addition, if there is any issue that presents an impediment to first action allowance of the present application, an interview is respectfully requested prior to any first Office Action on the merits.

Thus, Applicants respectfully request an interview prior to any first Office Action; and, the Examiner is respectfully requested to contact the undersigned prior to issuing any first Office Action to arrange a mutually convenient time and manner for such an interview.

Any additionally required fee or overpayment in any fee occasioned by this paper may be charged or credited to Deposit Account No. 50-0320.

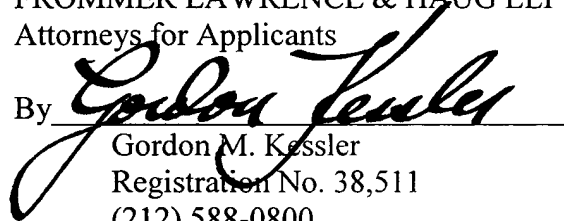
CONCLUSION

Early and favorable examination on the merits, special status, and first action allowance or an interview prior to any first Office Action (so any issues may be rapidly resolved), are all earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
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By



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